

2008

Fay v. Rodgers : Unknown

Utah Court of Appeals

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James L. Mouritsen; Attorney for Appellant.

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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

JOHN F. FAY, an individual,	:	MINUTE ENTRY
Plaintiff,	:	CASE NO. 060900141
vs.	:	
GLOBAL TRAVEL NETWORK, TODD	:	
RODGERS, and DOES 1-10, inclusive,	:	
Defendants.	:	

The Court has before it Defendant Todd Rodgers' Motion for Sanctions under Rule 11. Having reviewed the moving and responding Memoranda concerning this Motion, the Court determines that the Plaintiff violated Rule 11 of the Utah Rules of Civil Procedure in bringing claims against Defendant Todd Rodgers and that sanctions in the form of attorney's fees and costs are warranted.

The Court finds that Mr. Rodgers is an employee of Defendant Global Travel Network. He was involved in resolving the Plaintiff's complaints concerning Global Travel Network and signed a Settlement Agreement with the Plaintiff on behalf of Global Travel Network. However, the Court finds that there is absolutely no evidentiary support for the Plaintiff's claims that he understood Mr. Rodgers to be "Global for all intents and

purposes." Indeed, it is clear from the Plaintiff's opposition and his Affidavit that he understood throughout these proceedings that Mr. Rodgers was merely representing Global Travel Network.

In addition, while the Plaintiff alleged breach of contract and fraud claims against Mr. Rodgers, the Court can find no evidence to justify the assertion of these claims. As indicated above, Mr. Rodgers was not a party to the contract at issue in this case. In addition, the Plaintiff has never alleged that Mr. Rodgers was the alter ego of Global Travel Network or otherwise directly benefitted from the telemarketer's alleged misrepresentations. Simply put, the Plaintiff has never demonstrated a link between Mr. Rodgers and the fraud he alleged in the Complaint or even a reasonable belief that such a link existed. To the contrary, the Plaintiff clearly had no factual support for his claims against Mr. Rodgers, but nonetheless asserted these claims in the apparent hope of discovering something down the road.

Overall, it is important to point out that the Court is not dealing with a simple case of factual errors or misstatements, which are clarified upon reflection or through the discovery process. Rather, this is a case where the Plaintiff had absolutely no legal or factual basis for involving Mr. Rodgers in this action and asserting claims against

him. Under these unique circumstances, the Court concludes that the Plaintiff directly violated Rule 11 and that sanctions are warranted.

In reaching this conclusion, the Court notes that the Plaintiff is himself an attorney and initially represented himself. Further, while he subsequently engaged counsel, it appears to the Court that he continued to direct this action in most respects. Consequently, the Court declines to rule that the Plaintiff's counsel also violated Rule 11 or to hold counsel jointly liable to Defendant Rodgers for his attorney's fees and costs. The Court instead holds the Plaintiff liable under Rule 11 for such fees and costs.

This Minute Entry decision will stand as the Order of the Court, granting Mr. Rodger's Motion for Sanctions.

Dated this 15th day of April, 2008.

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ROBERT P. FAUST
DISTRICT COURT JUDGE

FILED DISTRICT COURT
Third Judicial District

BCT - 7 2008

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Pg SALT LAKE COUNTY
Deputy Clerk

ENTERED IN REGISTRY
OF JUDGMENTS

DATE 10/10/08

**IN THE THIRD JUDICIAL DISTRICT COURT, STATE OF UTAH
IN AND FOR SALT LAKE COUNTY, WEST JORDAN DEPARTMENT**

JOHN FAY, an individual,

Plaintiff,

vs.

GLOBAL TRAVEL NETWORK, TODD
ROGERS, AND JOHN DOE'S 1-10,
individuals,

Defendant.

JUDGMENT

Civil No.: 060900141
Judge: Robert Faust

Was a Defendant Todd Rogers Motion for Summary Judgment came on before the above entitled Court on the 24th day of January, 2008. The Court granted defendant Rogers Motion for Summary Judgment as to the two claims against defendant Todd Rogers. Trial on this matter was set for April 2, 2008. At that time, the Court awarded attorneys fees in an amount to be determined after filing an Affidavit of Attorneys Fees on behalf of counsel for defendant Todd Rogers. Having received said affidavit and memorandum from all parties relating to attorneys fees, the court ruled on August 21, 2008 that as result of legal services rendered by attorney David Maddox, plaintiff Todd Rogers is entitled to the judgment in the some of \$6,301.10.

Judgment @J



JD27181181

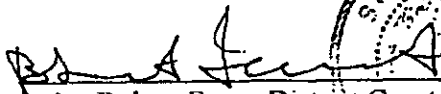
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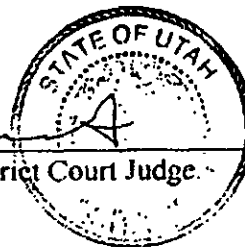
060900141 FAY,JOHN F

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that defendant Todd Rogers recover Judgment against plaintiff in the principal amount of \$\$6,301.10. The Judgment shall bear interest at the Judgment rate of 6.99% until paid.

DATED this 14 day of ^{October} ~~September~~, 2008.

BY THE COURT


Judge Robert Faust, District Court Judge.



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served this 2 day of August, 2008, by U.S. mail, postage pre-paid, upon the following:

James L. Mouritsen
Gregory & Swapp
2976 W. Executive Parkway, #200
Lehi, UT 84043

(X) U.S. Mail, postage prepaid
() Hand Delivered
() Overnight Mail
() Facsimile (801) 990-1976

